

**APPROVED JULY 22<sup>ND</sup>**

## **CITY OF EDMONDS PLANNING BOARD MINUTES**

**July 8, 2015**

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Chair Tibbott called the meeting of the Edmonds Planning Board to order at 7:03 p.m. in the Council Chambers, Public Safety Complex, 250 – 5<sup>th</sup> Avenue North.

### **BOARD MEMBERS PRESENT**

Neil Tibbott, Chair  
Philip Lovell, Vice Chair  
Matthew Cheung  
Carreen Rubenkönig (arrived at 7:05)  
Daniel Robles  
Valerie Stewart  
Nathan Monroe

### **STAFF PRESENT**

Rob Chave, Planning Division Manager  
Kernen Lien, Senior Planner  
Karin Noyes, Recorder

### **BOARD MEMBERS ABSENT**

Todd Cloutier (excused)

### **READING/APPROVAL OF MINUTES**

**VICE CHAIR LOVELL MOVED THAT THE MINUTES OF THE JUNE 24, 2015 RETREAT BE APPROVED AS SUBMITTED. BOARD MEMBER CHEUNG SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.**

The Board postponed approval of the June 10, 2015 minutes until the next meeting.

### **ANNOUNCEMENT OF AGENDA**

The agenda was accepted as presented.

### **AUDIENCE COMMENTS**

**Scott Blumenkamp, Edmonds**, recognized that the Board does not make laws and regulations for the City, but he urged them to carefully read and review the draft code language that comes before them before making a recommendation to the City Council. The language should be written in very general terms that are easy for everyone to understand. He referred the Board to the clear cut that occurred on a property on 232<sup>nd</sup> Street. He noted that his property is located just behind the property that was cleared and four of his trees were damaged and likely destroyed by the activity that occurred. One of the damaged trees is a 160-foot Douglas Fir. He reviewed that on July 6, 2004, the City Council adopted a code change allowing procedural exemptions for projects that require Architectural Design Board review. During its review, a City Council member specifically asked if the provision was intended to be an exemption from the tree clearing code or to get past the small item of not being able to clear for a subdivision. Staff emphasized that the provision was intended to be a procedural exemption and that the process would be required to adhere to the code. Now the Planning Division staff is interpreting the provision as an exemption for all projects (see ECDC 18.45.50 and ECDC 18.45.030).

Mr. Blumenkamp referred to the design standards, which require that trees and shrubs be shown on the proposed landscape plan and incorporated into the landscape plan if they are reasonably attractive and of good quality. He noted that with the project he referenced earlier on 232<sup>nd</sup> Street, the developer removed approximately 13 trees that were 20 inches or more in caliper. His guess is that most of these trees were healthy and attractive. He summarized that the City needs to be very careful when writing and interpreting code, and they need to follow the adopted codes that are in place.

#### **DEVELOPMENT SERVICES DIRECTOR REPORT TO PLANNING BOARD**

Mr. Chave referred the Board to the written report that was prepared by the Development Services Director and included in the Board's packet.

Vice Chair Lovell referred to the information provided in the report relative to the State Legislature approving an operating budget, including a transportation package that provides funding for a number of projects that will benefit Edmonds. The report also notes that the Legislature authorized local jurisdictions to raise their vehicle license tab fee from \$20 to \$40 per year to fund local transportation districts for local improvements. He asked if the City intends to pursue this option. Mr. Chave answered that the issue has not been discussed by the City Council, but it may come up as part of the upcoming budget discussions.

Board Member Robles asked if the railroad crossing study would only address vehicular traffic or if it would include pedestrian and human-powered vehicles, as well. He also questioned if the study would be coordinated with the work that is being done at South County Park. Mr. Chave answered that the two projects are not related, but the City's analysis would look at all modes of travel and not just focus on vehicular traffic. The intent is to review the alternatives and identify the best and most feasible solutions.

Chair Tibbott confirmed that Vice Chair Lovell would be the Planning Board representative at the sand sculpting contest on July 17<sup>th</sup>.

Vice Chair Lovell thanked the Development Services Director for producing the report on a regular basis. The report provides value and keeps the Planning Commission up to date. He commented that he is encouraged by the State Legislature's approval of a number of items that are important to Edmonds, and he hopes it leads to some positive developments in the future.

#### **PUBLIC HEARING ON IRRECONCILABLE APPLICATIONS CODE AMENDMENTS TO TITLE 20 (FILE NUMBER AMD20150001**

Mr. Lien recalled that the proposed amendments were first introduced to the Planning Board on June 10<sup>th</sup>. He reviewed that the City Council adopted Interim Ordinance 3992 on March 17<sup>th</sup> as an interim ordinance to address irreconcilable applications on the same property (ECDC 20.02.004). Interim ordinances may be effective for no longer than six months. The Planning Board is being asked to review the interim ordinance and make a recommendation to the City Council on a permanent ordinance that addresses irreconcilable applications. He referred to the draft ordinance (Attachment 2), noting that it is the same language that is contained in the interim ordinance. He explained that the intent of the interim ordinance is to address irreconcilable applications on the same property. As per the interim ordinance, if a second application is made on the same property as a previous application and the two projects have locations or features that could be irreconcilable, the first application would be deemed withdrawn and would not be processed further. To clarify the interim ordinance as it relates to irreconcilable applications that result in withdrawal, he provided the following examples:

1. An applicant submits an application for a four-lot short plat on a particular property. Subsequently, another application is submitted for a three-lot short plat on the same property. Assuming there is not enough land area for seven lots, the two applications would be considered irreconcilable because one could not construct both short plats. Hence the four-lot short plat application would be deemed withdrawn.
2. An applicant submits an application for design review of a 20-unit, multi-family development and subsequently, another design review application is submitted for a 30-unit development whose footprint would substantially

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overlap with the footprint of the structure shown for the 20-unit application. Because both structures would occupy the same space, they would be considered irreconcilable and the 20-unit application would be deemed withdrawn.

To clarify the ordinance as it relates to applications that may be inconsistent but are not irreconcilable resulting in withdrawal, Mr. Lien provided the following examples.

1. An applicant submits a four-lot short plat on a particular property. Subsequently, a building permit application is submitted for a single-family home, the footprint of which would encroach into the setbacks as measured from the proposed short plat lot lines. Because the building permit application could be corrected to properly locate the footprint, the applications are reconcilable and do not effect a withdrawal of the short plat application.
2. An applicant submits a landscaping plan that is inconsistent in an insignificant way with civil site-improvement plans that are submitted for the same property. If the two sets of plans can be reconciled by submitting a correct version of at least one of the two plans, City staff would seek corrections and withdrawal would not be deemed to occur.

Mr. Lien said a second part of the interim ordinance relocated a section that had to do with the resubmission of an application after denial from Edmonds Community Development Code (ECDC) 20.07 (Closed Record Appeals) to ECDC 20.02 (Development Project Permit Applications). As per the language in this provision, an applicant would not be able to resubmit an application within a 12-month period of denial unless there has been a significant change.

Mr. Lien recommended the Board forward a recommendation to the City Council to adopt the code amendments for Irreconcilable Applications and Resubmission of Application After Denial as contained in Attachment 2.

**Scott Blumenkamp, Edmonds**, pointed out that the term “substantial” is very open and vague. He suggested that a better definition be provided.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

Vice Chair Lovell requested further clarification of the proposed language related to the resubmission of applications after denial. Mr. Lien emphasized that this proposed change would simply relocate the existing language in ECDC 20.07.007 to ECDC 20.02.006. The existing language has to do with applications that are denied at some point during the review process, and is unrelated to the proposed language relative to irreconcilable applications. As currently written, an application cannot be resubmitted within a 12-month period unless substantial changes have been made.

Vice Chair Lovell referred to Mr. Blumenkamp’s comment and asked staff to provide some examples of what would be considered “substantial change” to an application that was denied that might warrant looking at it again. Mr. Lien said it would be difficult to provide specific standards for “significant change,” since the provision can apply to numerous types of projects. However, he explained that applications are denied for specific reasons, and a significant change could be that the application was altered to address the reasons for denial. For example, if a building permit is denied because it does not meet coverage or setback requirements, the applicant could alter the proposal to meet the standards and then resubmit the application without waiting for 12 months. Vice Chair Lovell suggested that perhaps the language could be revised to make it clear that revising an application to correct the findings that led to the denial would be considered a “substantial change.”

Board Member Cheung reviewed that, as proposed, if a second application is made on the same property as a previous application and the two applications are considered irreconcilable, the first application would be deemed invalid and the second application would apply. He asked if staff would notify the applicant when these situations occur, and Mr. Lien answered that applicants would be notified in writing. Board Member Cheung asked if applicants would also have the ability to modify and/or clarify the first application before it is deemed invalid. Mr. Lien said applicants would have the ability to modify the first application to correct mistakes and then withdraw the second application instead.

Mr. Lien explained that the interim ordinance was adopted to address an emergency situation related to a current project application that is under appeal in Superior Court. The applicant expressed a desire to submit a second application without withdrawing the first application. The interim ordinance, as well as the draft permanent ordinance, would require the

applicant to choose between the first or second application. He noted that this applicant was notified of the interim ordinance right after it was adopted.

Chair Tibbott asked staff to provide examples of “substantial changes” in conditions. Mr. Lien said that, in the case of a rezone application, substantial changes could include changes in the rezone criteria, encroachment of additional development, and changes to the Comprehensive Plan. He explained that it would be difficult to cite specific examples of substantial change in the code language because the provision applies to many different application types.

Board Member Rubenkönig suggested that rather than coming up with specific examples of what would be considered substantial change, it is more important to identify who would be responsible for making the determination. As currently written, the Development Services Director would make the determination, and he/she would be required to act within certain constraints as a representative of the City. The proposed amendment is intended to tidy up the code by placing the provision in a more appropriate location. If the City experiences a rash of situations, precedence could be established over time on how to handle the issue.

Board Member Rubenkönig asked if the draft language is consistent with the language that was adopted as part of the interim ordinance. Mr. Lien advised that the interim ordinance is outlined in Attachment 1, and the proposed language for the permanent ordinance is contained in Attachment 2. Although the language in both attachments is consistent, the Board is only being asked to review the draft language in Attachment 2 and forward a recommendation to the City Council.

Board Member Monroe asked how other cities address irreconcilable applications. Mr. Lien said he does not know how other cities address the issue.

**BOARD MEMBER LOVELL MOVED THAT THE BOARD FORWARD A RECOMMENDATION TO THE CITY COUNCIL TO ADOPT THE CODE AMENDMENTS FOR IRRECONCILABLE APPLICATIONS AND RESUBMISSION OF APPLICATION AFTER DENIAL AS CONTAINED IN ATTACHMENT 2. BOARD MEMBER RUBENKÖNIG SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.**

#### **PUBLIC HEARING ON DRAFT CODE FOR THE CRITICAL AREA ORDINANCE (CAO) UPDATE**

Mr. Lien reviewed that the Board received an introduction to the CAO update on March 25<sup>th</sup> and was provided copies of the 2015 Best Available Science (BAS) Report and 2015 Addendum, as well as a Gap Analysis Matrix (Attachments 1 and 2). Staff reviewed potential updates to the CAO (Attachment 3) on April 22<sup>nd</sup> and June 10<sup>th</sup>. He reminded the Board that all cities and counties in the State are required by the Growth Management Act (GMA) to adopt critical areas regulations. State law also requires that the regulations be updated periodically. Critical areas include wetlands, fish and wildlife habitat, critical aquifer recharge areas (none in Edmonds), frequently flooded areas, and geologically hazardous areas (erosion, landslide and seismic hazard areas).

Mr. Lien advised that the City’s current CAO was last updated in 2005, and the BAS Report was last updated in 2004. The City hired consultant, ESA, to assist in updating the 2004 BAS Report and identify changes that are needed in the CAO for consistency with BAS. The consultant and staff reviewed the administrative procedures, as well. He highlighted the proposed changes as follows:

- **Geologically Hazardous Areas.** Changes to this section include revising how landslide hazard areas are defined and updating the geotechnical report requirements. In addition, rather than establishing standard buffers and setbacks from landslide hazard areas, appropriate buffers and setbacks will be determined by a geotechnical report.
- **Wetlands.** Changes in this section include updating the delineation standards and wetland categories to be consistent with the Department of Ecology’s (DOE) Guidance for Small Cities. Specifically, buffer widths would be determined by a combination of the category of wetland and habitat score. Required mitigation ratios were also changed to be consistent with the DOE’s Guidance for Small Cities. In addition, the exemption section (ECDC 23.50.040(K)) was updated to address small hydrologically isolated wetlands (Category III and IV wetlands that are less than 1,000 square feet). As proposed, certain wetland provisions would not apply to small isolated wetlands, but they would not be exempt

from all wetland development standards as per the existing code. As proposed, small isolated wetlands could be altered if lost functions are replaced.

- **Native Vegetation on RS-12 and RS-20 Lots.** Staff is proposing changes to ECDC 23.90.040(C), which requires retention or establishment of a minimum of 30% native vegetation on undeveloped or redeveloped property within the RS-12 and RS-20 zones. He noted that this provision has characteristics of a provision in King County's CAO that was struck down by the Washington Court of Appeals. To address the concerns raised in the court findings, the proposed amendments provide more definition relative to the specific habitat features to be retained. In addition, a section was added that would allow the Director to waive the provision where habitat is nonexistent on a particular property.

Mr. Lien recalled that staff and the consultants initially drafted provisions that would replace this section with new requirements for Biodiversity Areas and Corridors. However, it later became clear that more study would be needed to fully develop standards for retention and connection. Under the current budget and time constraints, it is not possible to fully flesh out new code provisions at this time. However, the concept could be explored further when the City pursues the development of an Urban Forest Management Plan (UFMP) as currently being discussed in the draft Tree Code review. He expressed his belief that the proposed revisions would provide continued protection for naturally-vegetated areas of the City that are important to wildlife habitat, and also provide a more defensible code in line with recent court findings.

- **Physically Separated and Functionally Isolated Buffers.** BAS for critical areas is largely determined by rural areas where streams and habitat exist. Applying BAS buffers in Edmonds, which is largely built out, does not always make sense. The proposed provision in ECDC 23.40.320(C)(4) would allow development in areas that are functionally isolated and physically separated from a wetland by impervious surface of at least 8 feet. For example, a property located on the opposite side of a road from a stream could be within the proscribed buffer distance, but the road provides a barrier to any benefit the site could provide to the stream. New language was added to the definition of buffer to define a "functionally separated buffer" and a new paragraph was added in the allowed activities section (ECDC 23.40.220) to allow for development within physically separated and functionally isolated portions of a stream or wetland buffer.
- **Development within the Footprint of Existing Development.** Because Edmonds was developed prior to the establishment of critical area regulations, many wetland and stream buffers extend into residential yards that have been previously developed and provide limited function in terms of stream and/or wetland protection. Many buffers are substantially developed and contain impervious surfaces and commercial or residential buildings. Simply applying the standard buffers in situations like this will not provide the necessary characteristics to protect a stream and/or wetlands function. In these situations, it can be better to restore the buffer through enhancement activities. To address these situations, a new definition for "Footprint of Existing Development" (ECDC 23.40.320) was added and new sections were added to the Wetland and Fish and Wildlife Habitat Conservation areas that would allow development within the footprint of existing development and require enhancement of the remaining buffer in order to improve functions of the buffer. As proposed new development must be sited as far away from the critical area as possible, and an enhancement ratio of 1:1 would be required.

Mr. Lien explained that language in the existing code also allows additions to structures in the critical area buffer that expand the footprint based on a hierarchy of criteria. The proposed amendment would also allow for expansion of the footprint, based on these same criteria. However, additional mitigation would be required as outlined in ECDC 23.50.040(I)(1). As proposed, expansion of the footprint outside the inner 25% of the standard wetland buffer by 300 square feet or less would require a 3:1 mitigation ratio. An addition of 500 square feet or less would require a 5:1 mitigation ratio. Again, he explained that the goal of the proposed change is to improve the critical areas and buffers over what currently exists. Applying standard buffers to all properties would not result in an improvement. Allowing some development within the developed footprint would result in some improvement to the critical areas and their buffers over time rather than keeping the status quo.

- **Frequently Flooded Areas.** While frequently flooded areas are, by definition, critical areas, development within the flood zones in Edmonds (Lake Ballinger and the Puget Sound Shoreline) is guided by building code requirements: ECDC 19.00.025, International Building Code (IBC), and International Residential Code (IRC). While the IRC does not require single-family residences to be elevated above the Base Flood Elevation (BFE), the floors must be constructed to

at least the BFE. The IBC requires structures to be constructed at or up to two feet above BFE, depending on the category of the structure. He referred to Attachment 8, which contains the draft Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) for the downtown area, which were recently updated in 2014 and will become effective in 2016. Another issue to consider in the Coastal Flood Risk Zones is the effect of sea level rise. The most recent projection for sea level rise in the mid-Puget Sound Region is 24 inches by the year 2100 (National Research Council 2012). Given the pending FIRM map update and projections for sea level rise in Puget Sound, staff is recommending that the building code be amended to require the elevation of the lowest floor to be constructed a minimum of 2 feet above the BFE for all new structures within the Coastal High Hazard Areas and Coastal A Flood Zones. He referred to Attachment 4, which provides draft language for incorporating the recommendation into ECDC 19.00.025.

Mr. Lien explained that requiring structures to be constructed above the BFE will have impacts on the overall height for structures as allowed by the zoning code. The height of structures is currently measured from an average level of the undisturbed soil. The existing grade along the waterfront is at or below the BFE, so requiring structures to be built 2 feet above the BFE would effectively eliminate 2 feet of the allowable height for a structure. In order to maintain the existing height allowances, the Board should consider whether to modify the development code to establish a new base elevation from which the maximum height of structures within the Coastal High Hazard Areas and Coastal A Flood Zones are measured. This could be accomplished through a modification to the definition of height in ECDC 21.40.030 or through specific allowances within the zoning code. Attachment 4 provides examples of how this could be accomplished.

- **Restoration Projects.** The City does not want to discourage restoration projects that would provide a net benefit to the City's critical areas. Therefore, a new section has been proposed (ECDC 23.40.215) to grant relief for restoration projects that are not required as mitigation for a development proposal. The proposed relief is a reduction to the standard buffer otherwise required by the CAO. Two types of projects would be eligible for the relief: Daylighting of a stream or the creation/expansion of a wetland that would cause a landward expansion of a wetland and/or wetland buffer. As proposed, a property owner may apply for a buffer that is less than 75% of the standard buffer to the restoration project boundary. The buffer could be reduced to as little as 50% if a 75% buffer would significantly limit the owner's use of the property. The buffer reduction would have to meet the following criteria: minimum necessary to achieve the restoration project, provide a net environmental benefit, and be consistent with the purposes of the critical area regulations.

**Rebecca Wolf, Edmonds**, said her home is located within a critical area on 2<sup>nd</sup> Avenue South (Willow Creek). She said she has attended the Marina Beach Master Plan workshops, at which daylighting of Willow Creek has been a significant topic of discussion. She said she purchased her property because of the creek, and she would like the City to maintain the current buffers and not allow the footprint of development to increase. She shared examples in her neighborhood of how the creek and its buffer have been impacted by activities that the City has allowed to occur. She said she is presently taking a college course relative to the issue of sea level rise. Apparently, there are updated projections that sea level rise of up to one meter is anticipated by 2050 in some areas. She asked that the Board consider these newer projections.

**Scott Blumenkamp, Edmonds**, stressed that many of the City's codes are vague and not enforced. He particularly referred to a code provisions that prohibits developers from filling, excavating or storing equipment within the drip line of any tree to be retained. However, the example he referenced earlier on 232<sup>nd</sup> Street illustrates that this requirement is not being enforced by the City staff. He invited the Board Members to visit the property where the clearing occurred. Regardless of the code provisions that are put in place, it is up to the City staff to enforce them fairly and consistently.

Ms. Wolf agreed that enforcement of the code provisions is important. She questioned if the City's code prohibits property owners from using chemical fertilizers, etc. within wetlands and their buffers. If so, she asked that the City do more to enforce the requirement.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

Board Member Stewart asked if the City has current maps of the critical areas inventory that are available to the public. Mr. Lien said the City does have critical area maps that are available to the public, but they do not have them set up as a web-based program yet. He emphasized that the maps are not intended to be regulations; they are more used to inform the staff.

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If the maps indicate that a critical area may exist on a subject property, staff visits the site before making a final determination on whether a Critical Area Report would be required. This report would specifically map the critical areas on the property and would be submitted as part of a development application.

Mr. Lien referred to ECDC 23.40.270(D), which states that the Director may require that critical areas tracts be dedicated to the City as a condition of approval of a subdivision application. This provision would require that the tract be recorded on title. Vice Chair Lovell asked if all critical areas must be recorded on title. Mr. Lien answered that the requirement would only apply to new development proposals.

Vice Chair Lovell asked if someone who wants to build a deck in a critical area or its buffer would be required to obtain a permit. Mr. Lien answered affirmatively and said a critical area report would be required if it is determined there is a wetland or its buffer on the site. He pointed out that critical area determinations and reports are only valid for five years. Because BAS for critical areas changes over time, this time limit is important.

Board Member Stewart referred to ECDC 23.40.110(A) and ECDC 23.40.120(A)(3) and said she would like the City's regulations to require more than just "no net loss." The goal should be to improve the existing situation over time. Mr. Lien explained that allowing some development within the buffers, with an enhancement requirement, can result in an improved situation over time as opposed to applying a standard buffer. He noted that the mitigation sequencing (avoid the impact, minimize the impact, rectify the impact) contained in the current and draft CAO are standard across the board and consistent with BAS and the DOE's requirements. A qualified professional would have to show how the mitigation sequencing provision has been met.

Mr. Lien specifically referred to 23.90.040(D)(3), which provides different scenarios based on how much a development will encroach into the buffer. He explained that if the code provisions remain the same, there will be no improvements along streams. Allowing development to occur within the buffer areas, with enhancement, will result in improvements that will not likely occur otherwise. The goal is to improve the current situation, not just maintain the status quo; and language regarding this goal was added in various places throughout the draft CAO.

Board Member Stewart suggested that the enhancement ratio should be increased from 1:1 to 1.5:1 so there is always an improvement expected of someone who wants to encroach into the buffer area. This would require them to do better than just simply improving the buffer equal to the encroachment. Mr. Chave referred to ECDC 23.90.040(D)(3)(e), which applies to buffers that have already been disturbed by existing development. A 1:1 replacement ratio would result in greater than the status quo because it would be enhancing an area that has been previously disturbed. Again, Board Member Stewart voiced concern that requiring a 1:1 ratio would simply result in enhancing a buffer that is equal to the encroachment of new development and would not result in a net gain.

Mr. Lien said the City frequently receives requests from property owners who want to add garages where paved areas exist. The garage would not expand the footprint or increase the impact to the stream, but the City would require a 1:1 enhancement somewhere else along the stream. This will improve the condition over what already exists. Board Member Stewart agreed that the provision, as explained by Mr. Lien and Mr. Chave, makes sense.

Board Member Stewart asked staff to explain how the proposed definition for "footprint of existing development" came about. Mr. Lien said staff's first attempt was "legally established impervious surface area," but that did not include packed earthen materials. The current definition is the result of several iterations and includes not only structures and areas of pavement, but also packed earthen materials, etc. As currently proposed "footprint of existing development" means "It does not include yards which are not necessarily in their natural condition."

Board Member Stewart suggested that a buffer that is separated from a wetland by an 8-foot sidewalk should not be considered physically separated and functionally isolated. She noted that there are numerous options for converting impervious sidewalks to pervious pathways. Vice Chair Lovell felt that requiring a developer to replace an existing sidewalk with pervious materials would be an unreasonable demand. Board Member Stewart said she is not comfortable with designating a buffer area as physically separated and functionally isolated if it is separated from the critical area by an 8-foot sidewalk. The separation should be 15 feet. Mr. Lien said it is important to provide a definition of what the width should be, and the consultant has recommended that 8 feet of paved area provides sufficient separation where the area on the other side

is not providing function to the critical area. He emphasized that the provision only applies to wetlands and not landslide hazard areas. He suggested that perhaps the sidewalk width could be increased to 12 feet, which is the standard driveway width in the single-family zones.

Board Member Stewart requested examples from other jurisdictions relative to the physically separated and functionally isolated provision. She wants to ensure that the proposed language is consistent with the City's values. Mr. Lien agreed to talk with the consultant about whether or not the current driveway standard could be applied to sidewalks in this situation, as well. However, he said it might be difficult to find examples from other jurisdictions. Many jurisdictions end the buffer where the pavement starts and do not require enhancement, which is different than what the City envisions. Board Member Rubenkönig asked if the Army Corps of Engineers has changed how they look at buffers. Roadways used to be considered legal barriers.

Chair Tibbott asked if roadways that bisect critical areas and their buffers would be allowed to drain into the critical areas and/or buffers. Mr. Lien answered that the City's stormwater regulations require that stormwater runoff associated with new development be contained on site, and it would not allow the water to drain into a stream. The City would not approve a development that allows runoff to go across the street and into the critical area.

Board Member Stewart asked if eagles have been delisted as endangered species, and Mr. Lien answered affirmatively.

Vice Chair Lovell asked if redevelopment of an entire block would be required to meet the standard buffer provisions if there is a stream or wetland present or would a developer be allowed to develop consistent with the footprint of existing development. Mr. Lien answered that the standard buffers would apply. However, there are specific non-conforming provisions that would allow a house that is destroyed by fire to be rebuilt using the same footprint. Board Member Robles voiced concern that requiring redevelopment to meet the standard buffer would reduce property values significantly.

Board Member Stewart said her interpretation was that a property could be redeveloped using the existing footprint. Again, Mr. Lien said that would only be allowed if the structure burns down. If a developer purchases an entire block for redevelopment, development would be allowed within the critical area buffers but enhancement would be required.

Board Member Monroe observed that, as currently proposed, developing an accessory dwelling unit (ADU) that encroaches into the buffer area would require enhancement. Mr. Lien agreed and referred to 23.40.040(D)(4), which outlines the sequencing criteria for locating additions. He reminded the Board that the first choice is to locate the structure outside of the standard stream buffer, followed by outside the stream buffer averaged with enhancement and then outside of a stream buffer reduced with enhancement. The last choice would be outside the inner 25% of the standard stream buffer. He noted that a 500 square foot ADU that is outside the inner 25% of the standard stream buffer would require a 5:1 enhancement ratio or 2,500 square feet of enhancement. Board Member Monroe asked what happens if there is not sufficient area to provide the required 2,500 square feet of enhancement. Mr. Lien said there are other enhancement options (ECDC 23.40.140) such as removing some of the stream armament or paying into an in-lieu-of fund for an enhancement project elsewhere in the City.

Board Member Cheung asked how many properties in Edmonds are impacted by the CAO. Mr. Chave said that would be difficult to identify.

Board Member Robles asked if a buffer would be required for the stream in his backyard, which is in a culvert. Mr. Lien answered that if the stream is converted, no buffer would be applied to it. However, it would be great if the code language included provisions that encourage people to open the culverts via restoration projects without being penalized by larger buffers. He noted that some streams are both open and in culverts.

Board Member Rubenkönig asked if the critical area report that is done by a qualified professional would simply identify the wetland and/or buffer that is on the subject property or if it would also identify how the wetland is part of a larger contiguous area. Mr. Lien said the goal of the wetland determination is to determine whether or not a wetland delineation will be required. If a critical area report is required, the qualified professional will identify whether or not all three conditions for a wetland can be met. The analysis will also address the size of the wetland, which is part of the overall rating system. The analysis may extend off site. While the consultant may not have the authority to go on neighboring properties, they can use aerial photographs, etc. to make this determination.



Board Member Rubenkonig asked if a developer would only be required to address buffer requirements for the subject property. Mr. Lien answered that the CAO requirements would only apply to the property that is proposed for development. Board Member Rubenkonig asked if it is possible for portions of a wetland to be classified to a higher category. Mr. Lien answered that a wetland would not likely have different categories.

Board Member Rubenkonig referred to ECDC 23.50.010(B), which outlines the proposed rating system for wetlands. She suggested that the introductory paragraph be modified to identify the number of points that qualify wetlands for the various categories. For example, the higher classifications wetland classifications require 23 points, and the lower require just 16 points. Mr. Lien agreed to seek input from the consultant regarding this request.

Board Member Rubenkonig noted that there is no size connected with bogs. Mr. Lien explained that, as per DOE's requirement, bogs are categorized as Type I Wetlands regardless of size, but there are no bogs in Edmonds currently.

Board Member Rubenkonig referenced ECDC 23.50.030(F)(1)(b) and suggested that the language could be worded to be a more positive statement. Mr. Lien pointed out that ECDC 23.50.030(F)(1)(a) states what is required if the standard buffer is applied, and the following item outlines what is required if an applicant chooses not to comply with the mitigation measures.

Board Member Rubenkonig commented that she finds the approach used for the proposed CAO update to be appropriate and effective, as it merges all of the different authorities into one place. This will be less confusing for the residents of Edmonds.

Chair Tibbott asked staff to elaborate on the other innovative options for buffer enhancement when there is no reasonable opportunity on site. Mr. Lien said the options include removing armament, paying into an in-lieu-of fund for another enhancement project in the City, or participating in a state-certified wetland mitigation bank. He explained that both Jacobsen's Marine and American Brewing Company utilized the in-lieu-of option. In each case, the property owners paid into the fund an amount commiserate with the size of the project. Chair Tibbott asked if it was easy to identify the mitigation that was required. Mr. Lien answered that a 1:1 ratio is easy to apply.

Chair Tibbott asked what would happen if there is no City project to contribute to. Mr. Lien said applicants could contribute a fee-in-lieu of fund for future City projects, or they could choose to participate in a mitigation bank. He explained that mitigation banks have been established throughout the State, but it is difficult for the City to participate in the programs because they are not really connected to the larger water sheds and all of the City's drainage goes into Puget Sound. The City would prefer that the mitigation funds be used for projects within the same watershed. While banks are an option, there are no established banks that include Edmonds in their service area. The code, as written, would allow the City to participate if and when a bank is available. Chair Tibbott asked if the code promotes the establishment of mitigation banks, and Mr. Lien said it does not necessarily promote banks, but it does allow them. Mr. Chave commented that he does not believe the City will run out of enhancement projects with all of the culverts and impacted streams throughout the City. The in-lieu-of option would be superior to contributing to a vague mitigation bank.

Board Member Stewart referred to ECDC 23.50.040(F)(2), which requires the City to establish covenants limiting use of pesticides within 150 feet of wetlands. Rather than a covenant, Mr. Lien said limiting the use of pesticides could be a condition of project approval.

Chair Tibbott asked if herbicides and other chemicals can be applied within critical areas and/or their buffers. Mr. Lien said the consultant recommended that language be added to the CAO to address this issue. He referred to ECDC 23.40.220(C)(7), which allows for the removal of vegetation with hand labor and hand-held equipment. It provides a list of vegetation that can be removed to include: invasive and noxious weeds, English ivy, Himalayan blackberry, Evergreen blackberry, Scot's Broom and Hedge and Field Bindweed. ECDC 23.40.220(C)(7)(d) allows the application of herbicides, pesticides, organic and mineral-derived fertilizer or other hazardous substances, if necessary, as approved by the City, provided that their use shall be restricted in accordance with the State Department of Fish and Wildlife Management. The consultant recommended the provision because, in some cases, the use of herbicides is the best approach for controlling invasive species and noxious weeds. Mr. Chave clarified that the City would not independently allow the use of herbicides. They will refer to the regulatory authority to determine what types of herbicide are allowed for particular applications. Homeowners would not be allowed to use herbicides that have not been approved by the Department of Fish and Wildlife.

Board Member Rubenkonig asked what a citizen should do if they see someone using chemicals in wetland areas. Mr. Lien suggested they submit a code enforcement request. Chair Tibbott asked if the property owner or the company applying the chemical would be held responsible. Mr. Lien said that, ultimately, both the property owner and the company would be held responsible. Board Member Robles asked if a citizen complaint would become part of the public record. If so, this would create a disincentive for someone to report a problem? Mr. Chave said the complainant can ask to remain anonymous, recognizing that there is no guarantee that his/her name won't be revealed through some type of subsequent action.

Mr. Lien referred to the list of plant species that can be removed via hand tools and/or herbicides as per ECDC 23.40.220(C)(7). He noted that the list does not currently include alder, which come up by the thousands as seedlings. He suggested the Board consider adding alders to the list of species that can be removed. Board Member Stewart pointed out that alders propagate well, but they also put nitrogen into the soil and provide shade for streams. Mr. Lien said he is not talking about removing all alder trees in Edmonds, but just the seedlings. Board Member Stewart pointed out that if all the seedlings are removed, no new alders will grow.

Vice Chair Lovell said he printed the DOE's list of invasive and noxious weeds. He asked if Mr. Lien is suggesting that alders be added to the list. Mr. Lien clarified that he is not proposing that alders be added to the list of noxious weeds. Instead, they could be listed as a separate item in ECDC 23.40.220(C)(7). He pointed out that, as currently proposed, the removal of vegetation would be limited to 1,500 square feet in area as calculated cumulatively over a three-year period.

Board Member Stewart asked if the City's stream inventory is really as old as 2002. Mr. Lien answered affirmatively and advised that the inventory is being updated by the consultant as part of the current update.

Board Member Stewart requested further explanation relative to provisions for Biodiversity Areas and Corridors, which were struck from the most recent draft. Mr. Lien said the staff and consultant originally proposed Biodiversity Areas and Corridors, but they struggled with the applicable criteria. During the Tree Code discussions, the Board discussed the concept of creating an Urban Forest Management Plan (UFMP), which could include an inventory of the City's forested areas and corridors. Creating provisions for Biodiversity Areas and Corridors will be a large project, and the City does not have the time and/or money to complete the task as part of the CAO Update. Instead, the language was modified to protect the areas in the RS-12 and RS-20 zones that are associated with streams and steep slopes. The new provisions are tied to the type of habitat to protect throughout the City. He noted that future changes can piggyback with the UFMP.

Board Member Stewart asked if the City has maps that identify the corridors. If so, will these corridors be protected as they wait for the UFMP to be adopted? Mr. Lien said the provisions for protecting corridors will remain in the CAO via the requirement that 30% of the native vegetation be retained. However, the new language that was proposed relative to Biodiversity Areas and Corridors is no longer part of the draft proposal. He reminded the Board that the proposed language is intended to tie the requirement to the specific habitats that are being protected. Board Member Stewart indicated support for the proposed new language.

Mr. Lien requested Board feedback related to Attachment 4, which outlines options for amendments to the Frequently Flooded Areas Code (ECDC 23.70). He reminded the Board that staff is recommending that the building code be amended to require the elevation of the lowest floor to be constructed a minimum of two feet above the BFE for all new structures within the Coastal High Hazard Areas and Coastal A Flood Zones. However, staff also recognizes that this requirement will create issues relative to the height limit. Board Member Robles asked if the City is bound to the requirements of the IBC. And Mr. Lien answered affirmatively. He explained that, depending on the category of structure, the current buildings are either at BFE or two feet above BFE. The proposed amendment would not only be consistent with FEMA's updated FIRM map that will be effective in 2016, it will also address the anticipated sea level rise of 2 feet by 2100 as identified in the NRC's 2012 study.

Mr. Lien explained that the BFE elevation within the Coastal High Hazard Areas and Coastal A Flood Zones is 12 feet, and a survey of the Senior Center indicates it is at 11 feet. If the City requires structures to be built 2 feet above the BFE, they will essentially take away three feet of available height.

Board Member Robles commented that the construction industry finds ways to mitigate for the calamities that are anticipated. He suggested that perhaps sea level rise should be handled the same way. Rather than putting a law in place to regulate it, they could leave it to the market. Mr. Lien responded that the best way to mitigate for sea level rise is to build up so buildings do not get damaged in the future. He said he had a discussion with the Building Official about how to mitigate for sea level rise. Options include building a wall around the building, but the height of the wall would have to be sufficient to keep flood waters out. The building code requires that certain structures be built two feet above the BFE now and the recommendation is that this requirement should apply to all structures. Mr. Chave added that staff's thought is that inserting provisions relative to sea level rise is a first step. The Board can revisit the issue as additional science becomes available. He summarized that a series of steps need to be taken to fully address the issue, and staff feels it is time to introduce the idea that some sort of mitigation needs to be in the code.

Vice Chair Lovell commented that he not only supports the proposed provision, he believes it makes good sense for a city that is very environmental conscious and observant. The City should not ignore this federal guideline and the recommendation is based on BAS. He knows for a fact that not only the Senior Center, but the adjacent condominium development, are flooded regularly. Other approaches are not viable given what science says. While the details of science may change, sea level will continue to rise, and BAS says the City better do something to accommodate it. The only issue left to decide for him is how to best address the height issue. He did not believe it would be viable to reduce the overall height allowed for structures. While allowing additional height may rile some people in the City, he supports a proposal that would measure the 30-foot height from the BFE. Mr. Chave agreed that if the base height of structures is increased by two feet, then the height allowance should be increased accordingly. He emphasized that this would not allow a developer more building.

Chair Tibbott asked how often FEMA updates its flood elevations. Mr. Lien said they are not updated often.

Mr. Chave explained that while there is a lot of information about sea level rise along the coast, it varies substantially. The most generally accepted study for Edmonds is the 2012 study that was done by the NRC, which indicates the average rise will be two feet. The City will monitor this going forward. If the science changes at some point, the City has an obligation to revise codes to reflect the changes. The proposed amendment will introduce the subject into the code and get people used to the idea.

Vice Chair Lovell pointed out that the proposed language does not address sidewalks, railroad tracks, roadways, etc., all of which could be impacted by sea level rise. Perhaps sea level rise should be considered as the City studies options for addressing access over or under the railroad tracks. Board Member Robles agreed and questioned how many other projects need to address this same issue, such as the Marina Beach Park Master Plan. He questioned if there is a technological way to mitigate things in a way that complies with future science but is not bound by the two foot above BFE requirement. Again, Mr. Lien said the only other option offered by the Building Official was building a wall.

Mr. Lien noted that, as proposed, the BFE will be measured at the finished grade of the first floor of the structure. There are certain building code standards for how the materials below the first finished grade must be treated. Board Member Robles noted that, as proposed, a developer could construct a parking garage below the BFE.

Mr. Lien referred to the examples in Attachment 4 for addressing the height issue. One option would be to add a footnote to the maximum height within the site development standards table for each zone impacted by the Coastal Flood Hazard Zones (CW, P, MP2, BC, BD2, OR, RM-2.4, RS-12, RSW-12, RS-20, OS and CG). Again, he noted that this same footnote would need to be added to each zone. A second option would be to add the same language to the definition of height in ECDC 21.40.030. In either case, the language would read, *"For all properties located within the Coastal High Hazard Areas and Coastal A Flood Zones, height is measured from the elevation that is two feet above base flood elevation as identified from the applicable FEMA flood hazard map."*

Board Member Rubenkonig suggested that any new language, either in the footnote or the height exception, should include a reference to the applicable FEMA Flood Plan Map. It should be clear to the reader that the requirement is coming from outside of the City.

Mr. Chave suggested that it would make more sense to add language in the height definition, and the Board concurred. Mr. Chave said it is quite likely that the height definition will be relocated as part of the overall Development Code Update. Typically, the City avoids having regulations buried in the definitions. However, the way the code is currently set up, it makes more sense to add the new language to the height definition.

Mr. Lien advised that the Board will have one more meeting regarding to the CAO on July 22<sup>nd</sup>. At that time, staff anticipates the Board will forward a recommendation to the City Council. He summarized that the Board would like him to work further on the language for “physically separated and functionally isolated” language, particularly relative to 8-foot sidewalks.

Board Member Monroe said he would like more information about regulations pertaining to structures that are torn down and redeveloped. He would like the Board to consider language that would allow these structures to be rebuilt if they are within the same footprint. Mr. Lien reminded the Board that the non-conformance standards address when structures are destroyed by fire, but Board Member Monroe is interested in addressing replacement of structures in general. He agreed to provide additional information regarding this issue. Board Member Monroe said he is concerned that the proposed language would result in housing of the 1970s, with nonconforming structures being maintained instead of taking advantage of new building techniques.

### **DEVELOPMENT CODE UPDATE PROCESS**

Mr. Chave referred the Board to the written report prepared by the Development Services Director. He noted that the consultant is working on code language and options, which will be presented to the Board for review in the near future.

### **REVIEW OF EXTENDED AGENDA**

Chair Tibbott reminded the Board that they would continue their discussion relative to the CAO Update at their July 22<sup>nd</sup> meeting.

### **PLANNING BOARD CHAIR COMMENTS**

Chair Tibbott thanked the Board Members for their participation at the recent retreat. He felt it was worthwhile to hold the retreat off site to give the Board Members a flavor for another location in the City where a lot of development activity is occurring. He encouraged the Board Members to visit the Verdant site and take note of the projects that are in progress.

### **PLANNING BOARD MEMBER COMMENTS**

Board Member Lovell reported on his attendance at the June Economic Development Commission (EDC) Meeting. There wasn't a quorum present, so they were unable to conduct official business. The Director of the Chamber of Commerce provided an update on the group's activities, and there was some discussion about activities the Chamber sponsors. He said he plans to attend the next EDC meeting on July 15<sup>th</sup>.

Board Member Robles said he accepted Verdant's invitation to visit their facilities. The office and classroom space is a fantastic resource for health care professionals who serve citizens in Snohomish County.

Board Member Stewart reported that she attended the open house for the Marina Beach Park Master Plan, which was held just prior to the Board's meeting. There is currently one option presented for public review, and the electronic open house will start on July 9<sup>th</sup> via the City's website. She encouraged the public and Board Members to participate.

### **ADJOURNMENT**

The Board meeting was adjourned at 9:55 p.m.

**APPROVED**